Supreme Court, U.S.
FILED
OCT - 6 1993
OFFICE OF THE CLERK

No. 93-294

In The

Supreme Court of the United States

October Term 1993

JAMES OLIVER SINGLETON,

Petitioner,

v.

HARRY STILES, KENNETH RAMSEY, AND LARRY BULLARD,

Respondents.

On Petition for Writ of Certioari To The United States Court of Appeals For The Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

HENRY W. PREJEAN, JR.
329 N. Arcola
Angleton, Texas 77515
(409) 849-5711 ext. 1251
(409) 849-5711 ext. 1528 FAX

WALLACE N. SHAW
Post Office Box 3073-B
Freeport, Texas 77541-1273
(409) 233-2411
(409) 233-1132
(409) 233-4895 FAX

Attorneys for Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

PARTIES TO THE PROCEEDINGS

The Petitioner is James Oliver Singleton.

The Respondents are Harry Stiles, Kenneth Ramsey and Larry Bullard.

TABLE OF CONTENTS

Page

PARTIES TO THE PROCEEDINGS i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

SUMMARY OF THE ARGUMENT 4

ARGUMENT: REASONS FOR DENYING THE PETITION 5

I. THE COURT CORRECTLY DENIED THE *BATSON* CHALLENGE 5

II. PEREMPTORY CHALLENGES SHOULD NOT BE ABOLISHED 8

CONCLUSION 9

TABLE OF AUTHORITIES

Page(s)

CASES

Batson v. Kentucky, 476 U.S. 79 (1986) ..... *passim*

Edmonson v. Leesville Concrete Company, Inc., 500 U.S. ___, 111 S. Ct. 2077 (1991) 5

Hernandez v. New York, ___ U.S. ___, 111 S. Ct. 1859 (1991) 5, 6

United States v. Clemons, 941 F.2d 321 (5th Cir. 1991) 5

United States v. De LaRosa, 911 F.2d 985, 990-991 (5th Cir. 1990), *cert. denied*, 111 S. Ct. 2275 (1991) 7

United States v. Lance, 853 F.2d 1177 (5th Cir. 1988) ... 5, 6

United States v. Moreno, 878 F.2d 817 (5th Cir. 1989), *cert. denied*, 493 U.S. 979 (1989) 7

United States v. Roberts, 913 F.2d 211 (5th Cir. 1990) 6

STATUTES

42 U.S.C § 1983 1

No. 93-294

In The

Supreme Court of the United States

October Term 1993

JAMES OLIVER SINGLETON,

Petitioner,

v.

HARRY STILES, KENNETH RAMSEY, AND LARRY BULLARD,

Respondents.

On Petition for Writ of Certioari To The United States Court of Appeals For The Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIOARI

Respondents, HARRY STILES, KENNETH RAMSEY and LARRY BULLARD, respectfully pray that Petitioner's request for review by certioari be denied:

STATEMENT OF THE CASE

This case proceeded to trial on Petitioner Singleton's allegations of civil rights violations under 42 U.S.C. Section 1983 in July, 1992. It is initially noted that the U.S. Magistrate conducted the voir dire of the jury panel (See

generally 1/1 – 66/19, References are to Voir Dire and Jury Instructions). The jury venire was comprised of 29 members (See Master Jury List, R. Vol. 1, p. 636 and at Appellant's Index of Exhibits, Tab H). The racial make-up of the jury venire is not reflected in the record, although the Court does conclude that the stricken juror in issue was Hispanic (77/17-18). Petitioner, James Singleton is a black American citizen.

Following the announcement of peremptory strikes by Defendants' counsel, a *Batson* challenge was made by Plaintiff's counsel as to the peremptory strike of Juror No. 8, Mr. Ralph Gracia at 75/10-11 (Gracia is sometime incorrectly referred to as Mr. Garcia in the record). When asked by the Court about "prima facie" evidence of racial discrimination, Plaintiff's counsel responded that "Mr. Garcia" is a member of a discreet minority, being Hispanic speaking surname . . . "; that "he comprises one hundred percent of this panel's representation . . . "; and then Plaintiff's counsel concluded that defense counsels' striking (of "one hundred percent of this panel's representation") was prima facie evidence of a potential racial motivation (See 75/25 through 76/5).

The Court then asked defense counsel for any race neutral reasoning regarding the strike. Defense counsel gave race-neutral reasons for the strike which focused upon the juror's demeanor during the voir dire and his employment background as a civil engineer. As to demeanor it was initially stated " . . . it was kind of a mix of things: his demeanor and answer to certain – to the mention of constitutional claims and police officers and that type of things, as I understand it." (76/8-11) When the court asked for more explanation on demeanor it was

explained that the juror " . . . was very tentative . . . when he was raising his hand. We weren't sure if he'd ever make up his mind about anything." (76/25)

In addition, to defense counsel's personal observations of Mr. Gracia's general demeanor and tentativeness, defense counsel cited the juror's employment background as an engineer (76/14) and explained that " . . . some of our experience – collective experience with engineers on the Jury, they're kind of an unknown quantity." (76/17-19).

In response to defense counsel's race-neutral rebuttal explanations, Plaintiff's counsel essentially stated that the juror "answered the only question put to him in a forthright manner" and then asserted that the "engineer" reasoning was a pretext" because: "I think there are other engineers on the panel that weren't struck for that reason." (78/12). The record reflects one other juror whose juror questionnaire form indicates engineering as the juror's "type of work", Juror No. 15, Dewey H. Brunt, III, "Engineering Manager", and this juror was also peremptorily struck by defense counsel. (See Jury Questionnaire Forms, at Appellant's Index of Exhibits, Tab G; and Voir Dire 75/14-16). The juror questionnaire form for Juror No. 6, Donald G. Dooley indicates "Design Eng. & Survey" for type of work. This juror was peremptorily struck by Plaintiff (See Appellant's Index of Exhibits, Tab G and Voir Dire at 75/1-4).

The Court subsequently denied Plaintiff's *Batson* challenge (79/9-16).

SUMMARY OF THE ARGUMENT

I. THE COURT CORRECTLY DENIED THE *BATSON* CHALLENGE

The trial court correctly denied Petitioner's *Batson* challenge. Respondents through counsel presented facially valid, race-neutral reasons for their peremptory strike of Juror Gracia, such reasons being the demeanor (tentativeness) of the juror and the juror's employment background. In response, Petitioner failed to carry his burden of showing such reasons to be pretexural. Observations of demeanor cannot be reflected in the record. As to the employment background reason, Petitioner incorrectly asserted no other engineers were peremptorily struck but another juror with the same employment background as Juror Gracia was also peremptorily struck by Respondents. The Fifth Circuit Court of Appeals correctly afforded the trial court's ruling great deference under a "clearly erroneous" standard of review, since the trial judge's findings largely rely on an evaluation of credibility.

II. PEREMPTORY CHALLENGES SHOULD NOT BE ABOLISHED

Peremptory strikes serve the important purpose of securing an impartial jury. It is neither necessary nor beneficial to abolish an important trial institution such as the peremptory strike simply because it has a potential for abuse. *Batson* has established a mechanism for analyzing peremptory strikes and subjecting the same to scrutiny for equal protection violations.

ARGUMENT: REASONS FOR DENYING THE PETITION

I.

THE COURT CORRECTLY DENIED THE BATSON CHALLENGE

The Fifth Circuit Court of Appeals correctly applied well-established principles of law enunciated by this Court in affirming the judgment of the trial court relative to the Batson challenge at issue. A *Batson*[1] challenge to peremptory strikes should be reviewed with "great deference" since a trial judge's fact findings largely depend upon an evaluation of credibility. *Batson v. Kentucky*, 476 U.S. 79, 98 n.21, (1986); *Hernandez v. New York*, ___ U.S. ___, 111 S. Ct. 1859, 1869 (1991). This is because it has been recognized (and particularly so in cases involving observations of juror demeanor) that a fact finding based on the credibility of the non-movant lies "peculiarly within the trial judge's province". *Hernandez v. New York*, Id. at 111 S. Ct. 1869; *See, United States v. Lance*, 853, F.2d 1177, 1181 (5th Cir. 1988). Thus, a trial court's determination as to the existence of a *Batson* violation is reviewed under a "clearly erroneous" standard of review. *Hernandez*, 111 S. Ct. at 1871; *United States v. Clemons*, 941 F.2d 321, 325 (5th Cir. 1991).

Contrary to Petitioner's assertion, there is no implied requirement that observations of demeanor be "based in some rational manner on the record." These are exactly

---

[1] *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L.Ed.2d 69 (1986). See also, *Edmonson v. Leesville Concrete Company, Inc.*, 500 U.S. ___, 111 S. Ct. 2077 (1991) on applicability of *Batson* equal protection principles to peremptory strikes in civil cases.

the type of race-neutral explanations for which "great deference" is to be afforded the trial judge's findings, as such matters necessarily involve an evaluation of credibility on matters that cannot be reflected in the record. See e.g. *Hernandez*, 111 S. Ct. at 1867 (demeanor and responses); *United States v. Lance*, 853 F.2d 1177, 1180-1181 (5th Cir. 1988) (inattentiveness, eye contact and demeanor); *United States v. Roberts*, 913 F.2d 211, 214 (5th Cir. 1990) (disinterested demeanor and inattentiveness).

Petitioner's assertion that there is no duty on the *Batson* challenger to show pretext is simply an incorrect statement of the law. It is settled that there are three basic steps or stages of inquiry and evaluation in a trial court's analysis of a *Batson* challenge: (1) a movant must make a prima facie case showing that the non-movant has exercised peremptory challenges on the basis of race (2) if the requisite showing has been made, the burden shifts to the non-movant to articulate a race-neutral reason for the strike, and (3) the trial court must determine whether the movant has carried the burden of proving purposeful discrimination. *Hernandez*, 111 S. Ct. at 1866. The Fifth Circuit correctly ruled in this case that Petitioner had failed to show that counsel's explanations relative to the demeanor (tentativeness) of the juror in question were pretexural (or as a pretext for purposeful discrimination), and in doing so recognized that observations of demeanor cannot be reflected in the written record. This is clearly a matter in which great deference should be afforded the trial judge's evaluation and acceptance of the credibility of counsel's explanation.

In addition to the demeanor and tentativeness of the challenged juror, Respondent's counsel explained that the

Juror Gracia was also peremptorily struck because of his employment background as a civil engineer. This was due to their " . . . collective experience with engineers on the Jury . . . " as being an "unknown quantity" (76/17-19). This constitutes another facially valid, race-neutral explanation[2] for striking Gracia and one that was based on past "experience" of the defense counsel. Plaintiff counsel's argument of pretext as to the "engineer" explanation was and is incorrect on the basis of the record. To this race-neutral explanation, Plaintiff's counsel asserted incorrectly his belief that "there are other engineers on the panel that weren't struck for that reason" (78/12-13). The "reason" for defense counsels' other peremptory strikes are not part of the record because no *Batson* challenge was asserted to the other strikes. However, the record reflects that two other jurors who indicated engineering in their type of work were also peremptorily struck. Juror Brunt (Engineering Manager) was peremptorily struck by the Defendants (Respondents), and Juror Dooley was ("Design Eng. & Survey") was peremptorily struck by the Plaintiff (Petitioner). Again, Petitioner failed to show Respondent's race-neutral reason to be pretexural, and thus, failed to carry his burden of showing purposeful discrimination.

---

[2] The Fifth Circuit has recognized that employment background is an acceptable race-neutral reason for a peremptory strike. *See, e.g., United States v. Moreno*, 878 F.2d 817, 820-821 (5th Cir. 1989), *cert. denied*, 493 U.S. 979 (1989) (prosecutor's "gut reaction" that a commercial artist would be sympathetic for persons involved with drugs); *United States v. De LaRosa*, 911 F.2d 985, 990-991 (5th Cir. 1990), *cert. denied*, 111 S.Ct. 2275 (1991) (individual struck because of her employment with a church-affiliated agency).

II.

PEREMPTORY CHALLENGES SHOULD NOT BE ABOLISHED

Petitioner, as a final point, argues that peremptory strikes should be abolished entirely on the theory that they are inherently a "vehicle" for the evil of trial discrimination". This, of course, is the same argument made in Justice Thurgood Marshall's dissenting opinion in *Batson*. *Batson*, 476 U.S. at 101-109.

Peremptory strikes serve the important purpose of securing an impartial jury. Thus purpose was recognized by the majority in *Batson* and it was also concluded that this "historic trial practice" should not be abolished simply because of an apprehension and fear that "prosecutors and trial judges will not perform conscientiously their respective duties under the Constitution." *Batson*, 476 U.S. at 98 n.22.

It is neither necessary nor beneficial to abolish an institution such as the peremptory strike simply because it has the potential for abuse. *Batson* and its progeny have established a mechanism for analyzing peremptory strikes and subjecting the same to scrutiny for equal protection violations.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

HENRY W. PREJEAN, JR.
329 N. Arcola
Angleton, Texas 77515
(409) 849-5711 ext. 1251
(409) 849-5711 ext. 1528 FAX

WALLACE N. SHAW
Post Office Box 3073-B
Freeport, Texas 77541-1273
(409) 233-2411
(409) 233-1132
(409) 233-4895 FAX